

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHARLES J. ANDERSON,) Case No. CV 15-0077-RT (JPR)
Petitioner,)
vs.) ORDER TO SHOW CAUSE
E. VALENZUELA, Warden,)
Respondent.)

On December 31, 2014, Petitioner constructively filed a Petition for Writ of Habeas Corpus by a Person in State Custody. The Petition challenges his 1994 25-years-to-life sentence in Los Angeles County Superior Court for assault with a deadly weapon. (Pet. at 2.) Petitioner raises a single claim, that he "received a sentence enhancement based on a dismissed allegation in violation of Due Process Clause of the 14th Amendment" (*id.* at 5), which he apparently raised in state-court habeas petitions beginning in early 2014 (Pet., Exs. at last tab).

Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a petitioner generally has one year from the date his conviction became final to file a federal habeas petition.

1 See 28 U.S.C. § 2244(d). That statute provides:

2 (1) A 1-year period of limitation shall apply to an
3 application for a writ of habeas corpus by a person in
4 custody pursuant to the judgment of a State court. The
5 limitation period shall run from the latest of--

6 (A) the date on which the judgment became
7 final by the conclusion of direct review or the
8 expiration of the time for seeking such review;

9 (B) the date on which the impediment to
10 filing an application created by State action in
11 violation of the Constitution or laws of the United
12 States is removed, if the applicant was prevented
13 from filing by such State action;

14 (C) the date on which the constitutional
15 right asserted was initially recognized by the
16 Supreme Court, if the right has been newly
17 recognized by the Supreme Court and made
18 retroactively applicable to cases on collateral
19 review; or

20 (D) the date on which the factual predicate
21 of the claim or claims presented could have been
22 discovered through the exercise of due diligence.

23 (2) The time during which a properly filed
24 application for State post-conviction or other collateral
25 review with respect to the pertinent judgment or claim is
26 pending shall not be counted toward any period of
27 limitation under this subsection.

28 For those whose judgment became final before AEDPA was enacted,

1 as Petitioner's apparently did, the limitation period runs from
2 AEDPA's date of enactment - that is, April 24, 1996. See Wood v.
3 Milyard, 132 S. Ct. 1826, 1831 (2012).

4 Petitioner's petition for review was denied on January 17,
5 1996. (Pet. at 3.) Under Wood, he thus had until April 24,
6 1997, to file his federal Petition. He did not file it until
7 nearly 18 years later. He apparently did not file his first
8 state habeas petition raising the same claim until sometime in
9 early 2014. No statutory tolling is available when the first
10 state habeas petition was filed after the expiration of the
11 limitation period. See Ferguson v. Palmateer, 321 F.3d 820, 823
12 (9th Cir. 2003) (holding that § 2244(d) "does not permit the
13 reinitiation of the limitations period that has ended before the
14 state petition was filed," even if state petition was timely
15 filed).

16 Petitioner offers no explanation or excuse for the nearly
17 20-year delay in filing his Petition, and indeed it is hard to
18 imagine one. See Doe v. Busby, 661 F.3d 1001, 1015 (9th Cir.
19 2011) (noting that equitable tolling of 20 years "would be
20 difficult to justify"). There is nothing about Petitioner's
21 claim that he should not have known at the time of his
22 sentencing. It is true that in certain circumstances, a habeas
23 petitioner may be entitled to equitable tolling. See Holland v.
24 Florida, 560 U.S. 631, 645 (2010). But he must show that (1) he
25 has been pursuing his rights diligently and (2) "some
26 extraordinary circumstance stood in his way." See Pace v.
27 DiGuglielmo, 544 U.S. 408, 418 (2005). This Petitioner has not
28 done.

1 A district court has the authority to raise the statute-of-
2 limitations issue sua sponte when untimeliness is obvious on the
3 face of a petition; it may summarily dismiss the petition on that
4 ground under Rule 4 of the Rules Governing § 2254 Cases in the
5 U.S. District Courts, as long as the court gives petitioner
6 adequate notice and an opportunity to respond. Herbst v. Cook,
7 260 F.3d 1039, 1042-43 (9th Cir. 2001).

8 IT THEREFORE IS ORDERED that on or before February 6, 2015,
9 Petitioner show cause in writing, if he has any, why the Court
10 should not dismiss this action because it is untimely for the
11 reasons stated above. If Petitioner seeks to rely on the
12 equitable-tolling doctrine, he must provide detailed factual
13 allegations and evidentiary support, at least through his own
14 sworn declaration, demonstrating that an "extraordinary
15 circumstance" stood in his way and that he was reasonably
16 diligent in trying to circumvent it. Further, Petitioner is
17 advised that his failure to timely and sufficiently comply with
18 this Order may result in his Petition being dismissed, for the
19 reasons stated herein and for failure to prosecute.

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21 DATED: January 9, 2015



JEAN ROSENBLUTH
U.S. MAGISTRATE JUDGE

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